

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

EDWINA HARTUNG,	)	
	)	C.A. No. 05-881
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FIRST STATE DINING CORP. d/b/a	)	
GATOR'S SPORTS BAR,	)	
	)	
Defendant.	)	

**ANSWER AND AFFIRMATIVE DEFENSES OF  
FIRST STATE DINING CORP. D/B/A GATOR'S SPORTS BAR**

1. This Paragraph states a legal conclusion to which no response is required and, is, therefore, denied.
  
2. This Paragraph states a legal conclusion to which no response is required and, is, therefore, denied.
  
3. This Paragraph states a legal conclusion to which no response is required and, is, therefore, denied.
  
4. This Paragraph states a legal conclusion to which no response is required and, is, therefore, denied.
  
5. Admitted.
  
6. Admitted, except that it is denied that at all times relevant Defendant employed more than fifteen (15) employees.
  
7. Denied.
  
8. Denied.
  
9. Denied.

10. Denied that Defendant retaliated against Plaintiff for complaining of the alleged discrimination and/or for filing the charge of discrimination. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments, and they are, therefore, denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiff's Complaint.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by the applicable statutes of limitation and/or the doctrine of laches.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by applicable statutory and constitutional law.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

At all relevant times, Defendant acted in good faith and with due diligence toward Plaintiff.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part for failure to exhaust administrative remedies and/or satisfy the procedural requisites for suit.

**NINTH AFFIRMATIVE DEFENSE**

Defendant's termination of Plaintiff was made for legitimate non-discriminatory reasons.

**TENTH AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim for punitive damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

If Plaintiff suffered any damages or losses, which are denied, such losses or damages were caused in whole or in part by Plaintiff's own conduct, acts or omissions.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because Defendant exercised reasonable care to prevent and promptly correct any discriminatory harassing and/or retaliatory behavior, the existence of which is denied, and Plaintiff unreasonably failed to take advantage of corrective and/or preventative opportunities provided by Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by her own misconduct.

WHEREFORE, Defendant prays that the Complaint be dismissed, with prejudice, and that it be awarded its court costs, and such other and further relief that the Court deems appropriate.

**SEITZ, VAN OGTROP & GREEN, P.A**

**/s/ James S. Green, Sr.**  
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Attorneys for Defendant

Dated: January 11, 2006

**CERTIFICATE OF SERVICE**

I, James S. Green, Sr., Esquire, hereby certify that on this 11<sup>th</sup> day of January 2006, I electronically filed the following document with the Clerk of Court using CM/ECF which will send notification of such filing to counsel of record.

**ANSWER AND AFFIRMATIVE DEFENSES OF  
FIRST STATE DINING CORP. D/B/A GATOR'S SPORTS BAR**

/s/ James S. Green, Sr.

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